

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2001-469-C - ORDER NO. 2002-366

MAY 15, 2002

IN RE: Application of QX Telecom LLC for a	)	ORDER
Certificate of Public Convenience and	)	GRANTING
Necessity to Provide Facilities-based and	)	CERTIFICATE FOR
Resold Interexchange Telecommunications	)	LONG DISTANCE
Services within the State of South Carolina.	)	AUTHORITY

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of QX Telecom LLC ("QX" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide facilities-based and resold interexchange telecommunications services within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed QX to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of QX's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on April 24, 2002 at 3:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable H. Clay Carruth, Jr., Vice Chairman, presided. QX was represented by James W. Segura, Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Eddie Mishan, Managing Member of QX, appeared and testified in support of the Application. Mishan testified that he is responsible for all of QX's operations, including sales, service provisioning, maintenance, customer service and network surveillance. He said he oversees the entire product line offered by QX, from simple voice services to high speed transport products. The record reveals that QX is a limited liability company, incorporated in the State of Delaware on April 6, 2001, that has received authorization to transact business within the State of South Carolina. Upon receiving certification from the Commission, QX plans to subscribe to and resell all forms of interexchange telecommunications services in the State of South Carolina including: Message Telephone Service, Wide Area Telephone Service, WATS-like services, Foreign Exchange Service, private lines, tie lines, access service, prepaid calling card services and other services and facilities of communications common carriers and other entities. QX Telecom intends to provide service to both residential and business class customers throughout the entire State of South Carolina. Mishan stated that QX initially plans to offer only prepaid calling card services in South Carolina but applied for facilities-based authority in the event the market demand presents itself in the future. He testified that QX is headquartered in New York City and has its own Lucent Class 4 switch in that

location. Mishan testified that QX will arrange for its proposed services to be furnished using the transmission facilities of other certificated carriers to the extent permitted by the Commission and where consistent with applicable tariff regulations. He said QX's underlying carriers would be Global Crossing, Qwest, Sprint and BellSouth. Mishan offered that QX is currently authorized to provide telecommunications services in twenty-eight states and intends to seek certification in all remaining states.

Regarding the Company's technical ability to offer telecommunications services in South Carolina, the record states that the Company has the technical and managerial resources necessary to provide customers in the State of South Carolina with high-quality interexchange telecommunications services. The record further states that QX Telecom's management possesses extensive management and technical expertise in the telecommunications industry. Mishan explained that QX markets its prepaid calling card in connection with products or services that are sold on television by offering to provide free minutes for the first thirty days with the understanding that the consumer can try out the prepaid calling card free for thirty days and then have the opportunity to cancel the card or continue to use it and be billed \$39.90 per month plus \$3.90 service charge plus tax (only on the \$39.90 monthly fee). He said that QX charges the \$3.90 service charge each month because of the processing fees charged them by the credit card companies and the fees paid to the operational personnel who refresh the cards with new minutes or cancel the cards if the fees are not paid. He further said the consumer can use this prepaid calling card on a cell phone, a home telephone, a hotel telephone or a pay telephone. Mishan stated that QX does not sell its prepaid calling cards in retail stores or similar

outlets. He testified that the Company's name and toll-free customer service number appear on the card. He offered that there is no surcharge for each call, that the customer is made aware of the amount of minutes left on the card when they make a call, and that the cards expire thirty days from the refresh date. Mishan explained that QX trains the personnel who offer the prepaid calling cards in connection with a sales call on a product or service sold on television. Mishan said he understands the Commission's requirement for a surety bond which has already been filed with the Commission.

As to the Company's customer service, Mishan testified that the toll-free customer service is available twenty-four hours a day, seven days a week. The Company's toll-free customer care number is (800) 385-1968. He said Laura Gallupo is the Customer Care complaint person. He said he will be the Company's regulatory and customer service contact person.

As to QX's managerial abilities to offer the services it proposes to offer in South Carolina, Mishan testified that QX possesses the managerial resources and abilities sufficient to provide facilities-based and resold interexchange telecommunications services in this state. He offered resumes for himself, Jeffrey Mishan and Steven Mishan. Edward I. Mishan, the Company's witness, is Manager of QX Telecom LLC, and Jeffrey and Steven Mishan are Members. The resumes reveal that Edward I. Mishan is also Vice President, E. Mishan & Sons, Inc., Import/Export General Merchandise, and a partner. Jeffrey Mishan is President of the Mail Order Division and a partner in E. Mishan & Sons, Inc. Steven Mishan is a partner in E. Mishan & Sons, Inc. Mishan stated that other key personnel of QX are Denise McMillan, Narendra Mistry and Jignesh Shah. Mishan

testified that Denise McMillan oversees all of the software for the credit card charges and credit card credits. He said Mistry and Shah are involved with the software and components for the Lucent 4 switch. Mishan said he had gained his telecommunications experience in the last year by working with telecommunications companies to procure services from them.

In support of QX's financial ability to provide the services it seeks to provide in South Carolina, Mishan testified that QX is financially strong with a good cash reserve. He said the Company has sufficient financial capability to maintain the services to be offered. Mishan affirmed the Company's obligation to file all reports required by the Commission by certain deadlines. He further stated he would be the Company's financial contact person.

According to the Application and Mishan's testimony, QX requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (1976) so that QX can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in New York, New York. Mishan stated that the Company is aware and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours. QX also requested that it be allowed to keep its books and financial records according to the Generally Accepted Accounting Principles (GAAP) rather than according to the Uniform System of Accounts (USOA).

According to Mishan, QX has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has

been granted authority. Additionally, he said that QX has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, QX has not marketed its services in South Carolina prior to receiving certification. Mishan also testified that the Company has not received revenues from the completion of intrastate calls in South Carolina prior to receiving this certification. Mishan said that QX has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. Finally, Mishan testified QX will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. QX is organized as a corporation under the laws of the State of Delaware and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. QX currently operates as a switch-based reseller of interexchange services and wishes to provide its services in South Carolina.
3. QX has the experience, capability, and financial resources to provide the services as described in its Application.

### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to QX to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, on a facilities basis and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for QX for its interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. QX shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. QX shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed

increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, QX shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, QX shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 102-622.1 (1976) with its final Tariff.

5. QX is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. QX shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If QX changes underlying carriers, it shall notify the Commission in writing.

8. QX shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at



[www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations For Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. QX shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. As a condition of offering debit card services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by

either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed annually.

If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, then the company will withdraw its cards from that retail outlet. This Commission strongly suggests that the Company enter into written agreements with its South Carolina retail outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card. In addition, the Company shall include its name on the back of each of its prepaid calling cards.

11. With regard to the origination and termination of toll calls within the same LATA, QX shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by order No. 93-462.

12. By its Application and testimony at the hearing, QX requested a waiver from the Commission's requirement to maintain its books within the State of South Carolina according to 26 S.C. Code Ann. Regs. 103-610 (1976). The Commission grants

the Company's request to waive the record keeping regulation so that its books and records may be kept at its principal office and headquarters in New York. The Commission also grants QX the opportunity to keep its books and records in accordance with GAAP rather than the USOA.

13. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)